

PCT Rec'd 25 JUL 2001

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS : JÖRG SCHREIBER, Florian WOLF and Delphine CROIZET  
PCT Application No.: PCT/EP99/10241  
SERIAL NO. : TO BE ASSIGNED  
FILED : HEREWITH  
FOR : COSMETIC OR PHARMACEUTICAL LECITHIN-  
CONTAINING GELS OR LOW-VISCOSITY LECITHIN-  
CONTAINING O/W MICROEMULSIONS  
ART UNIT : UNASSIGNED  
EXAMINER : UNASSIGNED

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29 AUG 2001  
Legal Staff  
International Division

July 25, 2001

Box PCT  
Hon. Commissioner of Patents  
Washington, D.C. 20231

**PETITION TO REVIVE UNINTENTIONALLY ABANDONED  
APPLICATION PURSUANT TO 37 CFR § 1.137(b)**

SIR:

Petitioner respectfully requests that the Honorable Commissioner exercise his power and restore the above-identified application to pending status, the application having been unintentionally abandoned.

According to 37 CFR § 1.137(b), which sets forth the requirements for restoring an unintentionally abandoned application to pending status:

"A grantable petition pursuant to this paragraph must be  
accompanied by:

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- (1) The required reply, unless previously filed.

\* \* \*;

- (2) The petition fee as set forth in § 1.17(m);

- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional \* \* \*; and

- (4) Any terminal disclaimer (and fee as set forth in § 1.20d(d)) required pursuant to paragraph (c) of this section.”

#### The Reply

With respect to requirement (1), this application was unintentionally abandoned by failure to enter the U.S. national phase on time. Entry into the U.S. national phase was due thirty months from the priority date of December 22, 1998, or by June 22, 2001.

The above-quoted provisions of 37 CFR § 1.137(b) appear to be applicable to these circumstances. See, *Manual of Patent Examining Procedure*, § 1893.02 (“Applicant may file a petition to revive an abandoned application in accordance with the provisions of 37 CFR 1.137.”)

Further, 37 CFR § 1.494(a) provides in pertinent part:

“Where the United States of America has not been elected by the expiration of 19 months from the priority date \* \* \*, the applicant must fulfill the requirements of PCT Article 22 and 35 U.S.C. 371 within the time periods set forth in paragraphs (b) and (c) of this section in order to prevent the abandonment of the international application as to the United States of America.”

37 CFR § 1.495 provides in pertinent part:

“To avoid abandonment of the application, the applicant shall furnish to the United States Patent and Trademark Office not later than the expiration of 30 months from the priority date:

- (1) A copy of the international application \* \* \*; and
- (2) The basic national fee \* \* \*.”

37 CFR § 1.495(c) provides in pertinent part:

“If applicant complies with paragraph (b) of this section before expiration of 30 months from the priority date but omits:

- (1) A translation of the international application, as filed, into the English language, if it was filed in another language \* \* \*; and/or

- (2) The oath or declaration of the inventor \* \* \*, applicant will be so notified and given a period of time within which to file the translation and/or oath or declaration in order to prevent abandonment of the application.”

Thus, it should be clear that the “reply,” i.e., the submissions needed to avoid the original abandonment in this case are only two, i.e.:

- 1) A copy of the international application as filed; and
- 2) The basic national fee.

(An oath or declaration of the inventor is also required, but, in accordance with 37 CFR § 1.495(c), Petitioner presumes that once the application is returned to pending status, the Commissioner will set a time period in which the oath or declaration must be filed.)

Attached is a copy of the international application as filed. The Commissioner is authorized by the accompanying transmittal Form PTO-1390 to charge the basic national fee to

Deposit Account No. 14-1263.

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The Petition Fee

Regarding requirement (2), the Commissioner is also authorized to charge the fee set forth in § 1.17(m), and any other fees deemed necessary for consideration and/or grant of this petition, to Deposit Account No. 14-1263.

The Statement that the Delay was Unintentional

Regarding requirement (3), the undersigned hereby states that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional.

The Need for a Terminal Disclaimer


Regarding requirement (4), Petitioners submit that a terminal disclaimer is not required. By the terms of 37 CFR § 1.137(c), a terminal disclaimer must accompany a petition of this type, "[i]n a design application, a utility application filed before June 8, 1995, or a plant application filed before June 8, 1995." Since the instant application does not fall into any of these categories, Petitioners submit that a terminal disclaimer is not required.

In view of the foregoing, Petitioners submit that all of the requirements of a grantable petition have been met. Accordingly, Petitioners respectfully request that the Honorable Commissioner exercise his power and restore this application to pending status.

Early and favorable action is earnestly solicited.

Respectfully submitted,

NORRIS McLAUGHLIN & MARCUS, P.A.

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